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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,663

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Sylvain Dal

0512-1280

6617

466

7590

10/14/2008

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,663	Applicant(s) DAL ET AL.	
	Examiner Brent T. O'Hern	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/6/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2.198.469 in view of FR 2,499,025 and Layne (US 3,547,768).

French publication ('469) teaches a leakproof package in the form of a rectangular parallelepiped of polypropylene suitable for rapid opening by tearing and for containing a semisolid product that is capable of being put in a semiliquid state, in particular cheese, a first sheet cut out to an appropriate outline and shaped into a rectangular shell for receiving the product, and so as to present a pull corner for opening the package, and sealed, while leaving the pull corner free, and two tear strips disposed on and secured to the first sheet and folded along with the folds in the container, so as to be entrained when the pull corner is pulled, wherein the free pull corner is formed by a triangular projection formed on one of the sides of the first sheet cut out into an octagonal shape, and wherein the tear strips form a generally pointed U-shape with the tip thereof being situated in said triangular projection, wherein the tear strips are situated inside the shell and extend along two sides of the bottom of the shell
(See FIGs 1-4 and the entire document where the rectangular shaped package for cheese has tear strips #7 and #8 for opening the package.),

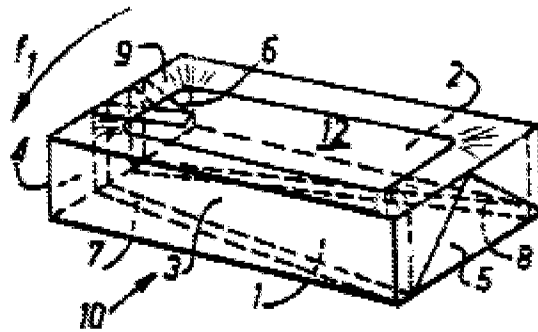


FIG. 1

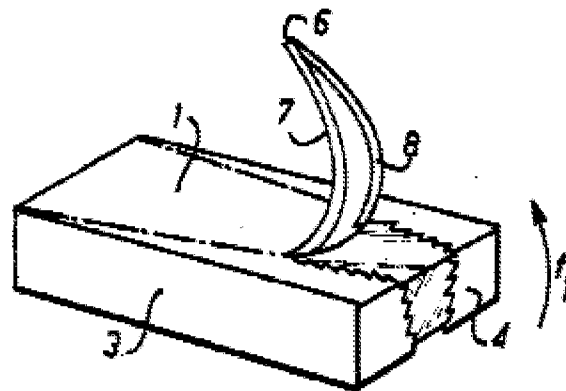


FIG. 2

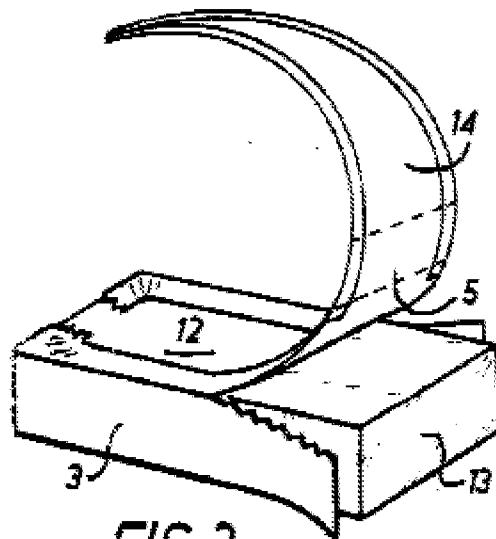
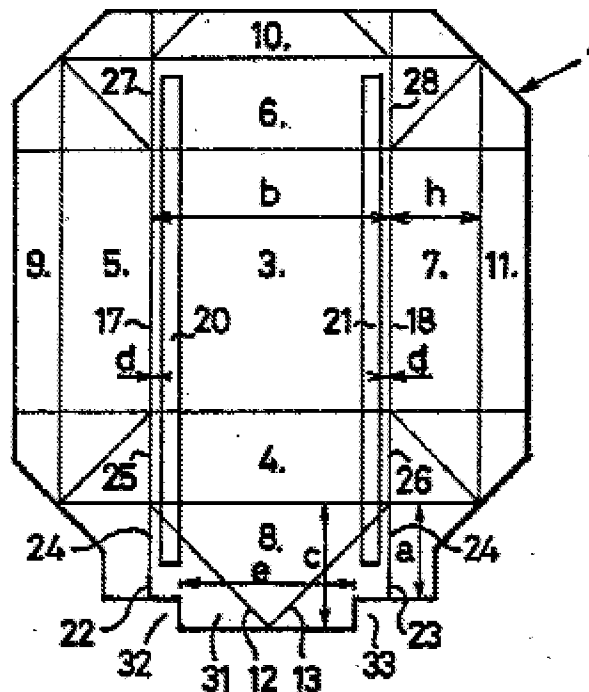


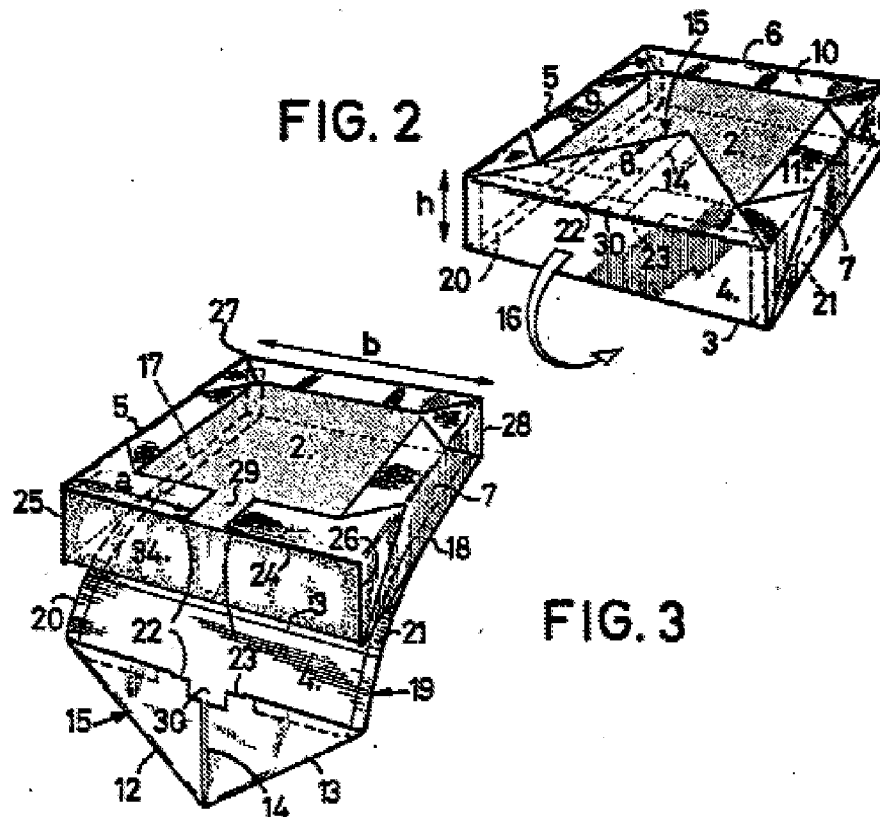
FIG. 3

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however, fails to expressly disclose a second sheet cut to at least the dimensions of the bottom of the shell and for placing flat on the product with the side faces of the shell being folded down thereon, and heat-sealed, while leaving the pull corner free.

French publication ('025) teaches a cheese package made of multiple pieces of folded packaging material #3 and #2 with tear strips #20 and #18 for the purpose of providing a barrier for the cheese and a means for opening (*See FIGs 1-3 and entire document.*).

FIG. 1



Layne ('768) teaches using polypropylene barrier material for heat sealed cheese packages for the purpose of protecting the packaged cheese (See col. 1, ll. 14-65 and col. 2, ll. 25-47.).

Regarding the tear starters, cuts and the shape of the applied tear strips, it appears from the figures of ('469) that tear starters with cuts are provided otherwise when the package is opened the film would not tear with the uniform jagged profile. Furthermore, ('025) appears to have tear cuts which allow for uniform tearing as illustrated in the figures. Regarding the shape of the applied strips, it would have been obvious as a matter of routine design choice to vary the orientation depending on the

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shape of the package and what is effective and/or pleasing to the consumers. In the alternative it would have been obvious to provide the package with such to aid in opening the package.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to use multiple sheets of packaging material, such as polypropylene and the above orientation and opening features, as taught by French publication ('025) and Layne ('768) in French publication ('469) in order to provide an effective barrier for packaged cheese.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/

Brent T O'Hern
Examiner, Art Unit 1794
October 1, 2008

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794